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**BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC**

INSTITUTIONAL COST CONTRIBUTION REQUIREMENT FOR COMPETITIVE PRODUCTS	Docket No. RM2017-1

COMMENT OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Pursuant to the Commission's November 22, 2016 advanced notice of proposed rulemaking in the above case, the National Association of Letter Carriers, AFL-CIO ("NALC") hereby submits this comment for consideration by the Commission in its determination of what minimum contribution to the Postal Service's institutional costs, if any, to require from the Postal Service's competitive products. For the reasons set forth below, NALC believes that the current minimum is unnecessary and should be eliminated. In any event, the Commission should certainly not raise the minimum.

I. CURRENT CIRCUMSTANCES SHOW THAT THE INSTITUTIONAL COST REQUIREMENT IS UNNECESSARY AND SHOULD BE ELIMINATED

Section 3633(a)(3) of the PAEA requires the Commission to promulgate regulations ensuring that competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service. Section 3633(b) provides that every five years, the Commission is to conduct a review to determine whether the institutional cost contribution requirement under Section 3633(a) should be "retained in its current form, modified, or *eliminated*." (Emphasis added). Current circumstances show that now is the time to eliminate the requirement.

In its last five-year review, in 2012, the Commission decided to continue the 5.5% minimum contribution requirement that the Commission had deemed appropriate in its initial 2007 review. *See* Order 1449, Docket RM2012-3 (Aug. 23, 2012). In its 2012 order, the Commission explained that a "primary function of the appropriate share requirement is to ensure a level playing field in the competitive marketplace." *Id.* at 13. In particular, the requirement was intended to prevent the Postal Service's market-dominant products from unfairly cross-subsidizing the fixed costs of its competitive products. *See id.* In determining whether there was a level playing field, the Commission in 2012 considered, among other things, whether evidence existed of the Postal Service engaging in predatory pricing of its competitive products and whether the revenue generated by those products covered their costs. *See id.* at 15. Although it found no evidence of unfair competition by the Postal Service, the Commission at the time decided to maintain the 5.5% requirement as a "protection against the Postal Service engaging in unfair or anticompetitive pricing." *Id.* at 25. The Commission stated that it would remain "vigilant" in its oversight to ensure that the Postal Service continued to meet the appropriate share contribution level of 5.5%. *Id.*

The need for a minimum (if there ever was a need) no longer exists because, in recent years, the contribution of the Postal Service's competitive products to its institutional costs has soared. As of FY2016, competitive products contributed $5.997 billion, or 16.5% of the Postal Service's institutional costs.[1] With the contribution rate now three times the minimum, no minimum is needed.

The increase in competitive products' contribution to institutional costs has accelerated in the years since 2012, when the Commission last reviewed the minimum. When the Commission did its review in 2012, the highest contribution percentage was 7.82 (for FY 2011), *see* Order 1449, at 20, less than half of what it is today. The contribution has climbed every

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[1] ACR2016, United States Postal Service FY 2016 Annual Compliance Report, at 89-90.

year since FY 2012. Because the actual contribution in recent years has so far exceeded the level that the Commission deemed appropriate in 2012, and because the trend lines are only going up, the need for a mandated floor has ceased to exist.

Nor do there remain (if there ever were) any real concerns about the Postal Service engaging in unfair competition through predatory pricing of its competitive products. To the contrary, in real, inflation-adjusted terms, the Postal Service's prices for its competitive products have increased over the years since enactment of the PAEA and, in particular, since the Commission's 2012 decision to continue the 5.5% minimum requirement. For example, over the last decade, the increase in rates for Parcel Select (up 79%), Priority Mail Express (up 60%), and Priority Mail (up 44%) have all far exceeded the increase in the Consumer Price Index for Urban Consumers (up 19%). With these higher prices, revenues from competitive products have far exceeded their incremental costs. For example, in 2016, competitive products generated $18.5 billion in revenue, against an incremental cost of $12.8 billion. That defeats any argument that the Postal Service is unfairly subsidizing its competitive products.

Moreover, as a result of these higher prices, competitive products' contribution to the Postal Service's institutional costs has increased faster than has the volume of competitive products. Over the last decade, contribution has risen a cumulative 283%, while volume has risen a cumulative 199%.

In sum, current circumstances show that there is no longer a need (if there ever was a need) to mandate a minimum amount that the Postal Service's competitive products must contribute to its institutional costs. Far from using resources from its market-dominant product operations to subsidize unfairly low prices for its competitive products, the Postal Service has been charging robust and ever-increasing prices for its competitive products, prices that contribute disproportionately to shouldering the fixed costs of the Postal Service. Because the Postal Service has both the incentive and the ability to charge prices for its competitive products that contribute more than those products' appropriate share of the Postal Service's institutional costs, there is simply no need to mandate a minimum contribution percentage.

II. IF THE MINIMUM IS RETAINED, IT SHOULD NOT BE INCREASED

Should the Commission decide to retain a required minimum, it should in no event raise the current level. As the Commission has previously noted, "[g]iven a very competitive marketplace where the Postal Service's market share is relatively small, setting the contribution level too high could adversely affect the Postal Service['s] ability to compete." Order No. 1108, RM2012-3 (Jan. 6, 2012), at 2. In particular, it could make the Postal Service vulnerable to a price war waged by its competitors. As the Federal Trade Commission found, legally imposed restraints on the Postal Service's operations already leave the Postal Service at a net competitive disadvantage. *See* Order 1449, at 15 (citing Federal Trade Commission, *Accounting for Laws that Apply Differently to the United States Postal Service and its Private Competitors*, (December 2007)). Hindering the Postal Service's ability to compete further would reduce choices for consumers and leave them paying more. It would also create additional drag on the Postal Service's finances, further strain its ability to provide quality service, and increase the pressure to boost revenues from market-dominant products.

CONCLUSION

For these reasons, NALC believes that the Commission should eliminate the requirement for a minimum contribution to the Postal Service's institutional costs from its competitive products. In any event, if the Commission decides not to eliminate the minimum, it should not raise it.

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Respectfully submitted,

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